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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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|-----------------|-------------|----------------------|---------------------|------------------|

10/524,138

02/11/2005

Picerrick Girard

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23117 7590 08/10/2007
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| EXAMINER |
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PALO, FRANCIS T

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| ART UNIT | PAPER NUMBER |
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3644

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| MAIL DATE | DELIVERY MODE |
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08/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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| Office Action Summary | Application No. 10/524,138 | Applicant(s) GIRARD ET AL. | |
| | Examiner Francis T. Palo | Art Unit 3644 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2007.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-49 is/are pending in the application.
4a) Of the above claim(s) 29-41, 43-46, 48 and 49 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 21-28, 42 and 47 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>6/7/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims 21-28, 33, 34, 42 and 47 in the reply filed on 4/27/07 is acknowledged.

Claims 29-32, 35-41, 43-46, 48 and 49 are **withdrawn** from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Further, **claims 33 and 34** are directed to a non-elected invention or species and are **withdrawn** from further consideration pursuant to 37 CFR 1.142(b).

Election was made without traverse in the reply filed on 4/27/07.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-26 and 47 are rejected under 35 U.S.C. 103(a),
as being unpatentable over **Anton** (SI 9600317 A2) 1998.

Regarding **independent claim-21** and **dependent claim-22**:

Anton '317 teaches a biodegradable fibrous support (coconut fibers, hay and/or straw and jute) strengthened with a cover (textile, or net (jute or coconut)) as described in the abstract; which is decomposed in to humus.

Therefore, Anton teaches a biodegradable support comprising a reinforcing grid associated with at least a part of the support (the grid of Anton is placed on one or two sides), and the grid includes threads (Anton teaches optionally a textile), which would be inherent to the teaching of a fabric, as claimed.

Anton in the absence of a translation is not specific to biodegradable threads composed of a biodegradable polymer as claimed.

Anton does teach an environmentally friendly natural material (support and grid) and teaches materials that are biodegradable for the support, grid and glue; specifically, coconut fibers, hay and/or straw and jute are taught for the support, while jute or coconut and non-specific textile is taught for the grid, and celluloid glue is further taught for an adhesive or binder.

In view of the guidance provided by the Supreme Court in *KSR*, it would have been obvious to a person of ordinary skill to have utilized polymeric biodegradable threads such as viscose as claimed, for the grid of Anton, as, if viscose is treated cellulose, and Anton teaches celluloid glue, then the use of viscose would be a logical compatible alternative to the biodegradable organic grid materials taught by Anton;

because a person of ordinary skill in the art has good reason to pursue the known options within his or her technical grasp to arrive at a grid material as claimed, for compatibility with the adhesive utilized by Anton, and if this substitution leads to the anticipated success, it is likely the product not of innovation, but of ordinary skill and common sense.

Regarding **claims 24-26 and 47**:

The discussion above regarding claim-21 is relied upon.

Anton teaches a grid that is needled on one or two sides of the support, which is readable on the positioning as recited in the instant claims; the grid is further spattered with latex, celluloid glue or another suitable binder, which is readable on the grid being glued directly on the surface of the fibrous support, and further, the glues recited in the claim are readable on other suitable binders as taught by Anton in the abstract, and the examiner takes official notice that the biodegradable glues as recited in claim-25 are well known in the art of mulching/mats for the well known advantages of that feature.

Further, In view of the guidance provided by the Supreme Court in *KSR*; the claim would have been obvious (that is, the weight of the glue, as claimed) because, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp to arrive at a glue weight for adhesive and strengthening purposes, that would result in the weight as claimed, and if this leads to the anticipated success, it is likely the product not of innovation, but of ordinary skill and common sense.

Regarding **claim-23**:

The discussion above regarding claim-21 is relied upon.

Anton is silent as to the weight of the grid as claimed (in the absence of a translation).

In view of the guidance provided by the Supreme Court in *KSR*; the claim would have been obvious (that is, the weight range of the grid, as claimed) because, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp to arrive at a grid weight for strengthening purposes, that would result in the weight range as claimed, and if this leads to the anticipated success, it is likely the product not of innovation, but of ordinary skill and common sense.

Claims 27, 28 and 42 are rejected under 35 U.S.C. 103(a),
as being unpatentable over **Anton '317** as applied to claim-21 above,
and further in view of **Weber** (EP 454104 A1) 1991.

Regarding **claims 27, 28 and 42**:

Anton teaches biodegradable natural materials as a support and in the absence of a translation is silent as to specific alternatives.

Weber '104 teaches a biodegradable latex-treated cellulose support, wherein the support can contain natural and/or **synthetic fibers** (abstract), but does not specifically mention thermo-bonding polylactic acid (PLA) fibers as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have substituted a synthetic polymer such as derived from PLA for the organic biodegradable support material of Anton as claimed, as Weber teaches **synthetic fiber** can be utilized for the support material, and it is well known to use PLA derived polymers for plant protection and for mulching applications (see Ehret US 5,783,504), as these PLA materials are utilized especially for their biodegradable characteristics, and further, such modification is merely an alternate functionally equivalent mulching material performing the same intended function of providing biodegradability characteristics.

And in view of the guidance provided by the Supreme Court in *KSR*; all the claimed elements were known in the prior art (that is, the use of PLA derived materials for use such as for mulching, especially for their biodegradability, and the teaching of substituting synthetic fibers for natural fibers suitable for use as a fibrous web mulching material), and one skilled in the art could have combined the elements in the weight ranges as claimed, by known methods, with no change in their respective functions (biodegradability and improved tear strength), and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Francis T. Palo

Francis T. Palo
Primary Examiner
Art Unit 3644